

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.74.502, 17.74.503, and 17.74.507)	PROPOSED AMENDMENT
pertaining to incorporation by reference of)	
current federal regulations into the)	(METHAMPHETAMINE CLEANUP
methamphetamine cleanup rules and)	PROGRAM)
clearance sampling)	

TO: All Concerned Persons

1. On November 17, 2006, at 1:00 p.m., a public hearing will be held in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., November 13, 2006, to advise us of the nature of the accommodation that you need. Please contact Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or e-mail rmartin@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.74.502 INCORPORATION BY REFERENCE -- PUBLICATION DATES

(1) remains the same.

(a) a federal regulation, the reference is to the July 1, ~~2005~~ 2006, edition of the Code of Federal Regulations (CFR); or

(b) remains the same.

AUTH: 75-10-1303, 75-10-1304, MCA

IMP: 75-10-1303, 75-10-1304, MCA

17.74.503 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference the following:

~~(a) 40 CFR Part 261, Identification and Listing of Hazardous Waste;~~

(b) through (d) remain the same, but are renumbered (a) through (c).

(2) remains the same.

AUTH: 75-10-1303, 75-10-1304, MCA

IMP: 75-10-1303, 75-10-1304, MCA

17.74.507 PERFORMANCE STANDARDS (1) through (1)(b) remain the

same.

- (c) perform all work in accordance with the approved work plan; ~~and~~
 - (d) station on site, at all times decontamination work is being performed, a contractor-employed certified supervisor to oversee the project; and
 - (e) have final clearance sampling conducted by an independent contractor who is not employed by the contractor described in (1), and who is certified by the department pursuant to this subchapter to perform that work.
- (2) remains the same.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

REASON: The department intends to annually update ARM 17.74.502, which identifies the edition of the Code of Federal Regulations (CFR) that is incorporated by reference in the methamphetamine cleanup program rules, adopted in 2006. The incorporation by reference process is accomplished by amending the CFR publication date specified in ARM 17.74.502(1)(a). The amendment to ARM 17.74.502(1)(a) would allow the department to follow the most recent edition of federal regulations, and thus maintain conformity with federal regulations. The federal regulation referenced in the methamphetamine cleanup program rules is the hazardous waste operations and emergency response (HAZWOPER) training regulation codified at 29 CFR 1910.120.

The department is proposing the deletion of ARM 17.74.503(1)(a) because 40 CFR 261 is not referenced in the methamphetamine cleanup program rules. The inclusion of ARM 17.74.503(1)(a) was due to an oversight that occurred in propounding the various draft editions of the rules.

The department is proposing the addition of ARM 17.74.507(1)(e) which would require a clandestine methamphetamine lab (CML) contractor to have an independent CML contractor conduct clearance sampling. Because of the potential for a conflict of interest, the department believes it is not appropriate for a CML contractor to conduct clearance sampling for his or her own project.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or e-mail to rmartin@mt.gov, no later than November 24, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Jane Amdahl, attorney, has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name and mailing address of the person to receive notices and specifies that the person

wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ David Rusoff

DAVID RUSOFF
Rule Reviewer

/s/ Richard H. Opper

Richard H. Opper, Director

Certified to the Secretary of State, September 25, 2006.